

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Biennial Regulatory Review -- Amendment of)
Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97)
and 101 of the Commission's Rules to)
Facilitate the Development and Use of the)
Universal Licensing System in the)
Wireless Telecommunications Services)

WT Docket No. 98-20

Amendment of the Amateur Service Rules to)
Authorize Visiting Foreign Amateur Operators to)
Operate Stations in the United States)

WT Docket No. 96-188

RM-8677

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

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SUMMARY

The American Radio Relay League, Incorporated (the League), the national, non-profit association of licensed amateur radio operators in the United States, respectfully requests that the Commission reconsider and modify, in part, the *Report and Order*, FCC 98-234, released October 21, 1998, (63 Fed. Reg. 68904, published December 14, 1998) in the instant proceeding. While the *R&O* implements a difficult consolidation of WTB databases, it fails to adequately address two important issues: (1) the continuing need for the issuance of FCC paper licenses; and (2) the effect of the requirement of Taxpayer Identification Numbers (TIN) on non-United States citizens. Furthermore, the Form 605 requires modification to include requisite certifications of volunteer examiners. Therefore, the League respectfully requests that the Commission reconsider and modify its *R&O* accordingly.

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To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

The American Radio Relay League, Incorporated (the League), the national, non-profit association of licensed amateur radio operators in the United States, by counsel and pursuant to §1.429 of the Commission's rules (47 C.F.R. §1.429), hereby respectfully requests that the Commission reconsider and modify, in part, the *Report and Order*, FCC 98-234, released October 21, 1998, (63 Fed. Reg. 68904, published December 14, 1998¹) in the above-captioned proceeding. The *Report and Order* (hereafter "*R&O*"), among other things, implements the Universal Licensing System (ULS) for the Amateur Service. In support of its Petition, the League states as follows:

¹ That Report and Order, having been published in the December 14, 1998, Federal Register, is subject to petitions for reconsideration filed through January 13, 1999, pursuant to §§ 1.429(d) and 1.4(b)(1) of the Commission's Rules. Accordingly, this Petition for Reconsideration is timely filed.

I. INTRODUCTION

1. On February 19, 1998, the Commission adopted a Notice of Proposed Rule Making proposing the implementation of ULS for all wireless services.² The League filed Comments in this proceeding, raising specific implementation issues.³ On October 21, 1998, the Commission released the above-captioned *R&O*. While the *R&O* addressed many of the concerns raised in the League's Comments, it did not adequately address two important issues: (1) the continuing need for the issuance of FCC paper licenses; and (2) the effect of the requirement of Taxpayer Identification Numbers (TIN) on non-United States citizens. As well, the adopted Form 605 omitted certain items of significant importance in the Amateur Service, which necessitates review and modification of the new form.

II. The issuance of national Amateur Service license documents continues to serve important purposes, including the protection of licensees' rights and compliance with international agreements.

2. In the *ULS Notice*, the Commission made several rule change references to "license grants" in the Amateur Service. In its Comments to the *ULS Notice*, the League expressed concern that this rule change might create the impression that the Commission no longer needed to issue paper licenses because the official "license grant" was deemed to have occurred upon entry into the Commission's database.

² Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Notice of Proposed Rule Making*, 13 FCC Rcd 9672 (1998) (*ULS Notice*).

³ See, the *Comments of the American Radio Relay League, Incorporated in Response to Notice of Proposed Rule Making*, filed May 21, 1998.

3. In the *R&O*, the Commission appears to have misunderstood the League's argument concerning issuance of Amateur Service license documents. The Commission suggests that this is a "settled issue" and quotes a prior *Memorandum Opinion & Order*⁴ addressing amateur licensing procedures, declaring that "operation is authorized when the grant of the license has occurred."⁵ This undoubtedly refers to the fact that the Commission actually grants a license when the license processing facility enters the data into the amateur service licensee data base, which in the future will be the ULS.⁶ The League does not dispute, or seek reconsideration of that premise, or any aspect of that proceeding. However, reliance on this rule as authority for eliminating paper licenses is misplaced. First of all, the *R&O* wrongly suggests that the League objects to this rule; in fact, the League appreciates the benefits conferred by the rule.⁷ The fact that operation is authorized when the grant of the license has occurred does not affect the practical and legal necessity and requirement that the Commission continue to issue amateur service license documents. The issuance of national amateur service license documents continues to serve important purposes, including the protection of licensees' rights and compliance with

⁴ Amendment of the Amateur Service Rules to Change Procedures for Filing an Amateur Service License Application and to Make Other Procedural Changes, *Memorandum Opinion and Order*, 10 FCC Rcd 5417 (1995) ("Amateur Licensing MO&O").

⁵ *Id.*

⁶ This was clarified by the Commission by *Order*, 9 FCC Rcd. 6111, released October 24, 1994, at the time the Commission amended the Amateur Service rules to provide for electronic filing of license applications by VECs. Prior to that Order, a successful examinee in the Amateur Service for a new license had to wait for receipt of a mailed license document from the Commission prior to exercising the new privileges earned. The Order clarified that the license is granted when the information shows up in the database, thus eliminating some delay in the commencement of amateur operations by new licensees.

⁷ In ¶10 of the Comments of the League in Response to the *ULS Notice*, the League noted that the rule change and the commencement of electronic filing by VECs "greatly facilitated the commencement of amateur operations by new licensees, and the process has worked well."

international agreements, regardless of when the Commission decides that operating authority was granted.

4. The issuance of amateur license documents by the Commission serves several important purposes, which cannot be served by other means. It is often necessary to demonstrate that one holds a Federally-issued license, in order to establish certain entitlements, such as the ability to obtain zoning or other land use authorizations to install antennas, and to establish the entitlement to the protections afforded to licensed radio amateurs by the Commission's antenna regulation preemption policy. *Amateur Radio Antenna Preemption*, 101 FCC 2d 952 (1985), *codified at* 47 C.F.R. §97.15(e). It is absolutely necessary to be able to prove that one is an FCC-licensed radio amateur in order to enjoy the protections afforded against unreasonable state and local statutes and ordinances regulating possession of scanning receivers. Licensed radio amateurs are typically exempt from the restrictions in ordinances and statutes on the possession or use of such receivers, largely pursuant to the protections offered by the Commission's *Memorandum Opinion and Order*, 8 FCC Rcd. 6413 (1993). Absent the ability to produce a Federally-issued license document, radio amateurs stand to suffer arrest and criminal prosecution, as well as seizure of equipment by local law enforcement officers.

5. Furthermore, international amateur radio operation often necessitates the possession of a written, government-issued license document in order to afford entitlement to reciprocal licenses for operation outside the United States. Foreign customs officials frequently require the exhibition of an amateur license document in order to permit the release of equipment from customs at the foreign point of embarkation. The *R&O* acknowledges that the European Conference of Postal and Telecommunications Administrations (CEPT) international reciprocal operating agreement places certain requirements on amateur operators traveling in a CEPT country:

“For a United States citizens (sic) to operate an amateur station in a CEPT country, certain requirements of the CEPT European Radio Committee (ERC) must be met for participation by non-CEPT Administrations. Under the CEPT agreement, to activate operating authority, a traveler would have to carry credentials in English, French and German that the person, if a U.S. citizen, and if a Commission-authorized amateur operator, is entitled to certain amateur station operating privileges in the specific countries that have implemented the CEPT agreement. For this purpose, we intend to rely upon: (1) a public notice containing the above information; (2) *proof of Commission-authorization to operate*⁸; and, (3) proof of U.S. citizenship.”⁹ (Emphasis added.)

However, here the Commission suggests that unspecified “proof of Commission-authorization to operate”¹⁰ is sufficient to satisfy the requirements of CEPT. This is not the case. The United States requested acceptance, and has been accepted by the European Radiocommunications Office (ERO)¹¹, as a participant in the CEPT Recommendation for international reciprocal amateur license recognition. The underlying assumption in that entire arrangement is that the United States radio amateur visiting a CEPT member country will hold a document issued by the United States

⁸ It did not go unnoticed that the Commission changed the wording of the second requirement from “(2) the Commission-issued amateur service license document (FCC Form 660),” as it read in the Commission’s *Notice of Proposed Rule Making*, Amendment of the Amateur Service Rules To Authorize Visiting Foreign Amateur Operators to Operate Stations in the United States, WT Docket No. 96-188, 11 FCC Rcd 11768 (1996) (“CEPT NPRM”). The change, however, does not, and cannot, change the fact that the CEPT agreement requires that U.S. amateur operators traveling in a CEPT country possess a U.S. government-issued amateur service license document.

⁹ *R&O* ¶176.

¹⁰ In ¶180, The *R&O* suggests that VECs could provide licensees with a paper document acknowledging a licensee’s entry in the Commission database. However, the CEPT agreement requires that licensees present a government-issued document, and the Commission may not consistent with Section 301 of the Communications Act, delegate the authority to issue a government license.

¹¹ The ERO has, on February 17, 1998, accepted the United States’ proposal to participate in the T/R 61-01 licensing arrangement.

government called a license.¹² The CEPT license itself is such an instrument. The letter from the United States Department of State to the ERO requesting participation in the CEPT Recommendation states in part that “the FCC will recognize amateur radio licenses of participating CEPT members for temporary operation in the United States,” and requests ERO confirmation that the CEPT members in turn will honor reciprocally the FCC license –when presented together with a Public Notice – as equivalent to a “CEPT Radio Amateur License.” That United States representation, which formed a material part of the proposal to the ERO which was accepted, became a treaty obligation of the United States. Further, other countries have no obligation to recognize anything less than an FCC-issued license document.

6. The same thought is carried over in other parts of the exchange of letters. Tab E of the United States correspondence with the ERO states categorically that the United States license may take the form of two parts: “the national license document (FCC Form 660) and a Public Notice referencing CEPT Recommendation T/R 61-01.” “On request, the license holder shall present the original license document and a copy of the Public Notice.” Paragraph 2c of Tab E also states that “when operating the amateur station, the person must have in his or her possession the original license document and a copy of the Public Notice.” The Public Notice document itself states that “when operating the amateur station, the person must have in his or her possession a copy of this Public Notice and the original license document.” Both documents must be shown to proper authorities upon request. Therefore, it is clear that a United States written proposal, which the CEPT countries approved, firmly contemplates, *inter alia*, an FCC-issued license document.

¹² CEPT-Recommendation T/R 61-01 (Nice 1985, revised in Paris 1992 and by correspondence August 1992). Appendix I, General Provisions Relating to the “CEPT Radio Amateur License,” states, in relevant part, that ““CEPT radio amateur license” will take a form similar to a national license or a special document issued by the same authority,”

7. Finally, the ITU Radio Regulations, at S18.1, would appear to require the issuance of license documents by an administration:

No transmitting station may be established or operated by a private person or by any enterprise without a license issued in appropriate form and in conformity with the provisions of these Regulations by or on behalf of the government of the country to which the station in question is subject.

This is not to suggest that the Commission cannot construe its license grant to occur when the license information appears in its database,¹³ but rather only that subsequently, a license document evidencing that fact must be issued by, or on behalf of, the Commission.

8. The *R&O* suggests that VECs could provide amateur licensees with a paper document acknowledging the licensee's entry in the FCC database. However, such unofficial documents would lack the U.S. government seal denoting authenticity, and would no doubt be treated with suspicion, or given no credibility at all, by customs and other officials, who would be unaware of the Commission's practice. Only the Commission may grant a United States amateur service license¹⁴, and only the Commission can issue such a license under the national seal. The Commission cannot, consistent with the Communications Act, or with Title 31 of the United States Code, Section 1342,¹⁵ delegate the authority to issue an official license document to VECs.¹⁶ Furthermore, CEPT member countries are not required to honor anything less than the official Commission license, and there is no indication that a document issued by an agency

¹³ The League acknowledges that this is now the case.

¹⁴ 47 U.S.C. §310.

¹⁵ 31 U.S.C. §1342 states, in relevant part, that "An officer or employee of the United States government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property."

¹⁶ Note that Section 4(f) of the Communications Act allows the Commission to delegate to VECs tasks related to the preparation and conducting of amateur license examinations, but not the issuance of official license documents.

other than the Commission would be honored. Further, because CEPT is now a United States treaty obligation, the Commission lacks the authority to modify a CEPT requirement. License holders cannot rely on the Commission's database as evidence when traveling to foreign countries or dealing with Customs officials. Therefore, the Commission must continue to issue paper licenses because such licenses are the only acceptable proof of Commission-authorization to operate in the amateur service. Despite the *R&O*'s suggestion to the contrary, the paper license *is* a non-replaceable necessity which establishes certain entitlements and protects certain rights which cannot be achieved by any other means.

9. Accordingly, the League urges that the rules continue to provide for the issuance by the Commission of paper license documents, for the reasons stated herein. The League notes that the Commission has acknowledged as its policy the principle that government should be responsive to user needs. 9 FCC Rcd. at 6111, citing *Vice President Al Gore, Report of the National Performance Review, From Red Tape To Results: Creating a Government that Works Better and Costs Less*, at 6-8 (1993). The continued issuance of amateur radio license documents is both necessary and an urgent user need for the reasons specified herein.

III. The *R&O* fails to account for non-United States citizens who hold U.S. amateur licenses but have no Social Security number, and therefore no Taxpayer Identification Number (TIN).

10. The *R&O* outlines the Commission's plan to collect Taxpayer Identification Numbers (TINs) from all licensees in order to implement the ULS.¹⁷ The plan, among other things, will require that all applicants for licenses and all licensees (regardless of citizenship) must register their

¹⁷ The plan is outlined in ¶141 of the *R&O*.

TIN with the Commission through ULS.¹⁸ Presumably, noncompliance with the TIN requirement carries certain penalties.¹⁹ The plan, however, fails to account for the thousands of non-United States citizens who hold U.S. amateur licenses²⁰ but have no Social Security number, and therefore no TIN. The *R&O* requirements provide no exception for non- United States citizens who hold U.S. amateur licenses. However, it is impossible for these licenses to comply with the rules as they now read. Simply stated, they cannot provide what they do not have. Nevertheless, such licensees would be subject to penalties for noncompliance with the TIN requirement. The Commission must reconsider this section of the *R&O* in order to make a specific accommodation for these licenses. One possibility for these persons would be for the Commission to issue them some substitute TIN or some other type of registration number.²¹ But whatever accommodation is decided upon, it should have, but did not, appear in the *R&O*. The Commission must revise the *R&O*, so as to avoid unfair penalties and discriminatory treatment, for the many thousands of non-United States citizens who hold U.S. amateur licenses.

IV. The Form 605 contained in the Appendix to the *R&O* omits required certifications, and requires modification.

11. The Commission, in the *R&O*, replaced the long-standing FCC Form 610, the application for amateur operator and primary station license, with the multiple purpose Form 605. The Form

¹⁸ *R&O* ¶141.

¹⁹ A licensee's failure to provide a TIN, in addition to being a rule violation, would cause that licensee not to be listed in the Commission's database. Because the listing in the database now constitutes the grant of an FCC license, the failure to provide a TIN and resulting failure to be listed in the electronic database would essentially result in the loss of the license.

²⁰ Note that there is no citizenship requirement to obtain a U.S. amateur station and operator license.

²¹ This suggestion was raised in ¶29 of the Comments of the League in Response to the NPRM issued in this proceeding, WT Docket No. 98-20.

605 has a main form section, and a series of schedules, some of which the applicant will use, as appropriate, for the particular type of application. The League, in comments in this proceeding, noted several errors or omissions in the draft Form 605 appended to the Notice, which the Commission addressed at paragraph 182 of the *R&O*. However, there are remaining omissions which must be corrected in order to permit compliance with the Part 97 regulations by applicants for new or modified amateur licenses.

12. First of all, neither the Form 605 Main Form, nor any schedule applicable to the Amateur Service, contains a section for Volunteer Examiners (VEs) to certify that an applicant has met the requirements to obtain a new or upgraded amateur operator license. This information is required pursuant to Section 97.509(i) of the Commission's Rules, which specifies, in relevant part, as follows:

When the examinee is credited for all examination elements required for the operator license sought, 3 VEs must certify on the examinee's application document that the applicant is qualified for the license and that they have complied with these administering VE requirements. The certifying VEs are jointly and individually accountable for the proper administration of each examination element reported on the examinee's application FCC form 610...

The certification of the three administering VEs on the application form assures the integrity of the examination session, and is regularly used to assure the VEC that the examination was regularly and properly administered. The certifications have not been rendered unnecessary by any regulatory change, and in fact they contribute substantially to the integrity of the VE program.

13. Similarly omitted is information concerning where and when an examination for a new or upgraded amateur license was administered, and a block for the VE to certify the operator license class for which the applicant has qualified. This information is fundamental to the highly successful volunteer examiner program, and to the continuation of the high level of integrity of the program.

The information presently contained at Section 2 of the FCC Form 610, therefore, must be carried over to the Form 605.

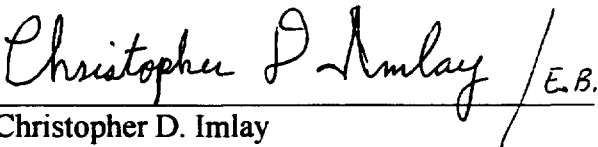
IV. CONCLUSION

14. In sum, the *R&O* implements a difficult consolidation of WTB databases, and the League congratulates the Commission on a comprehensive modernization of its data systems and application processing mechanism. Notwithstanding this achievement, the *R&O* fails to adequately address two important issues: (1) the continuing need for the issuance of FCC paper licenses; and (2) the effect of the requirement of Taxpayer Identification Numbers (TIN) on non-United States citizens. Further, the Form 605 requires modification to include requisite certifications of volunteer examiners. Therefore, the foregoing considered, the League respectfully requests that the Commission reconsider and modify its *R&O* as indicated hereinabove.

Respectfully submitted,

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